

ORDINANCE NO. 92- 1

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR AMENDMENTS TO THE CHARTER OF PALM BEACH COUNTY, FLORIDA, TO REPEAL CHARTER REFERENCES TO THE COUNTYWIDE PLANNING COUNCIL, AND TO ENACT A NEW ARTICLE VII WHICH EMPOWERS THE BOARD OF COUNTY COMMISSIONERS TO EXERCISE COUNTYWIDE GROWTH MANAGEMENT AND LAND USE AUTHORITY; PROVIDING FOR A TITLE; PROVIDING FOR THE ADOPTION OF AMENDMENTS TO THE CHARTER; PROVIDING FOR A MARCH 10, 1992 REFERENDUM; PROVIDING FOR BALLOT LANGUAGE; PROVIDING FOR FORM OF NOTICE; PROVIDING FOR ADOPTION BY AFFIRMATIVE VOTE OF FOUR MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CHARTER OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Section 1(c), Article VIII of the Constitution of the State of Florida provides that by general law, a county government may be established by charter; and

WHEREAS, the voters of Palm Beach County did adopt a charter for Palm Beach County at the general election on November 6, 1984, effective January 1, 1985; and

WHEREAS, the voters of Palm Beach County did adopt Article VII of the Palm Beach County Charter at the general election on November 4, 1986, establishing the Countywide Planning Council; and

WHEREAS, the voters of Palm Beach County did adopt Section 1.3(3) providing for a Countywide Future Land Use Element to prevail over conflicting municipal ordinances; and

WHEREAS, the Palm Beach County Charter, Section 6.3, provides that the Board of County Commissioners may propose charter amendments by ordinance subject to approval of the amendments by referendum; and

WHEREAS, the Board of County Commissioners through its staff has proposed Charter amendments it believes would provide effective growth management and better land use regulation for Palm Beach County; and

WHEREAS, the Board of County Commissioners has proposed amendments to repeal Charter references to the "Countywide Planning Council" which was repealed in accordance with Article 7.19 and to enact a new Article VII which would authorize the

1 Board of County Commissioners to exercise Countywide Growth
2 management and land use authority and to adopt, amend,
3 implement and enforce the Countywide Future Land Use Element in
4 accordance with Section 1.3(3) of the Charter; and

5 **WHEREAS**, Section 1.3(3) of the Charter provides for a
6 Countywide Future Land Use Element which is adopted in
7 accordance with Article VII to prevail over conflicting
8 municipal ordinances; and

9 **WHEREAS**, on December 16, 1991, the Board of County
10 Commissioners adopted a Countywide Future Land Use Element,
11 Ordinance No. 91-49, as an optional element of its
12 Comprehensive Plan, in accordance with Florida Statutes,
13 Chapter 163 and 9J-5 FAC, and Article VII of the Palm Beach
14 County Charter; and

15 **WHEREAS**, to insure the effectiveness of the Countywide
16 Future Land Use Element, Ordinance No. 91-49, it is in the
17 public interest that the Board of County Commissioners be given
18 the responsibility and authority to implement and enforce the
19 prevalence of the Countywide Future Land Use Element over
20 inconsistent local government land use plans; and

21 **WHEREAS**, amendments to the Countywide Future Land Use
22 Element could significantly affect the conservation of water
23 resources, the environment, solid waste management, and other
24 natural resources and countywide requirements; and

25 **WHEREAS**, it is in the public interest that amendments to
26 the Countywide Future Land Use Element be based upon consistent
27 countywide goals, objectives and policies for solid waste,
28 water conservation, environmental regulation, other natural
29 resources and countywide requirements; and

30 **WHEREAS**, adoption of this ordinance will allow the
31 electors of Palm Beach County to replace the Countywide
32 Planning Council with the Board of County Commissioners, who
33 shall implement and enforce the Countywide Future Land Use
34 Element, and shall exercise Countywide growth management and
35 land use authority, at a referendum to be held March 10, 1992.

1 NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
2 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

3 Provision 1. TITLE:

4 This ordinance may be cited as the Charter Amendment for
5 Countywide Growth Management and Land Use Authority.

6 Provision 2. LEGAL STATUS OF COUNTYWIDE FUTURE LAND USE
7 ELEMENT:

8 The Countywide Future Land Use Element as adopted by Palm
9 Beach County as an optional element of its Comprehensive Plan
10 shall remain in effect as at the date of adoption. Provided,
11 however, if this referendum does not pass, the Countywide
12 Future Land Use Element may be repealed by the Board of County
13 Commissioners.
14

15 Provision 3. ADOPTION OF CHARTER AMENDMENTS:

16 Subject to the approval of the electorate as required by
17 the Constitution and Laws of Florida and Section 6.3 of the
18 Palm Beach County Charter, the Charter of Palm Beach County,
19 Section 1.3 of Article I, is hereby amended to read as follows:
20

21 **Sec. 1.3. Scope of County Ordinances - Conflict with Municipal**
22 **Ordinances.**

23 Municipal ordinances shall prevail over County ordinances
24 to the extent of any conflict, regardless of the time of
25 passage of the municipal ordinances, except that the County
26 ordinances shall prevail over conflicting municipal ordinances:
27

- 28
- 29 (1) In matters relating to the protection of wells
30 and well-fields within the parameters set forth
31 in Section 3.3 of this Charter.
32
 - 33 (2) In matters relating to school, County-owned
34 beaches, County district parks, and County
35 regional parks, solid waste disposal, County
36 law enforcement, County road programs, and
37 County public building impact fees; and in
38 matters related to County fire-rescue and
39 County library impact fees in those
40 municipalities whose properties are taxed by
41 the County for library or fire-rescue purposes,
42 respectively. This subsection shall not be
43 construed as preempting or limiting in any way
44 the enactment of municipal impact fee
45 ordinances for those capital facilities
46 provided exclusively by municipalities. The
47 County shall provide a credit toward the
48 payment of County impact fees for properties
49 within those municipalities which provide like
50 capital facilities. This Section shall not be
51 construed as a transfer of functions or powers
52 related to municipal services.
53
54
55

(3) For the adoption and amendment of the Countywide Land Use Element adopted in accordance with Article VII of this Charter, ~~"Countywide Planning Council"~~.

(4) In matters relating to the establishment of levels of service for collector and arterial roads which are not the responsibility of any municipality, and the restriction of the issuance of development orders which would add traffic to such roads which have traffic exceeding the adopted level-of-service, provided that such ordinances is adopted and amended by a majority of the Board of County Commissioners.

Provision 4.

Subject to the approval of the electorate as required by the Constitution and Laws of Florida and Section 6.3 of the Palm Beach County Charter, the Charter of Palm Beach County, Article VII is hereby established to read as follows:

ARTICLE VII. COUNTYWIDE GROWTH MANAGEMENT AND LAND USE AUTHORITY

Sec. 7.1. The Board of County Commissioners of Palm Beach County is empowered to exercise Countywide Growth Management and Land Use Authority.

The Board of County Commissioners of Palm Beach County is empowered to exercise Countywide Growth Management and Land Use Authority for Palm Beach County and to amend, implement and enforce the Countywide Future Land Use Element.

Sec. 7.2 Scope.

The Board of County Commissioners is hereby empowered to adopt, amend, implement and enforce the Countywide Future Land Use Element; to coordinate the land use planning process of all governments within the county; to plan and coordinate countywide growth; to set goals, objectives and policies in the Countywide Future Land Use Element for water conservation, environmental regulation, solid waste, historic preservation, the non-municipal roadway system, school siting, urban redevelopment, affordable housing, mass transit and other countywide issues as set forth in the adopted Countywide Future Land Use Element and to establish a cooperative effort that will resolve, or more importantly, prevent incompatibilities and conflicts among local governments/governmental agencies land use planning efforts.

The Board of County Commissioners shall not regulate nor review development orders of a local government except as permitted in accordance with Section 163.3215, Florida Statutes, 1989 and provisions of this Charter.

Sec. 7.3 Definitions.

(1) Countywide Future Land Use Element - An optional element of the Palm Beach County Comprehensive Plan, authorized by an amendment to the Palm Beach County Charter. The Countywide Future Land Use Element shall meet the general requirements of Chapter 163, Part II, Florida Statutes and Chapter 9J-5 of the Florida Administrative Code. The Countywide Future Land Use Element may contain goals, objectives, policies, and standards which address countywide

1 issues. The Countywide Future Land Use Element shall form the
2 basis for local government Future Land Use and related element
3 certification and for the evaluation of amendments to the
4 Countywide Future Land Use Element. It shall also form the
5 basis for consistency review of local government Land
6 Development Regulations.

7
8 (2) Countywide issues - Any use of land which causes an
9 impact beyond the boundaries of one jurisdiction.

10
11 (3) Governmental Agencies - Local government(s), the
12 South Florida Water Management District and the Palm Beach
13 County School Board.

14
15 (4) Local government - Any county or municipality, as
16 defined in Chapter 163, Florida Statutes.

17
18 (5) Interjurisdictional incompatibility - A potential
19 implementation of a local government future land use element or
20 related element which:

21
22 (a) Creates a potential unplanned financial burden on
23 another local government(s), its citizens or
24 governmental agencies; or

25
26 (b) Creates potential incompatible land uses, density
27 or intensity adjacent to one (1) or more local
28 governments and/or governmental agencies; or

29
30 (c) Creates potential adverse impacts beyond the
31 boundaries of one (1) jurisdiction; or

32
33 (d) Creates a potential excess demand on the
34 infrastructure or natural resources beyond the
35 boundaries of one (1) jurisdiction.

36
37 (6) Related Elements - Those elements of a local
38 government's Comprehensive Plan which are necessary to
39 demonstrate consistency with the Countywide Future Land Use
40 Element.

41
42 **Sec. 7.4. Administration.**

43
44 (a) The Board of County Commissioners shall employ such
45 staff as are necessary to carry out the duties authorized by
46 this Charter and as provided for in the County's adopted
47 budget.

48
49 (b) The Board of County Commissioners may appoint such
50 boards or committees as it deems necessary to carry out the
51 duties and authority of this Charter. A board or committee
52 shall be created to arbitrate interjurisdictional
53 incompatibilities as identified in Section 7.3.

54
55 (c) The Board of County Commission staff shall conduct
56 such studies and prepare reports as necessary to achieve the
57 purposes of this article.

58
59 (d) The Board of County Commissioners shall adopt
60 policies to administer the implementation of this article.

61
62 **Sec. 7.5. Effective Date and Effect.**

63
64 The Countywide Future Land Use Element shall take effect
65 one (1) year from the date of adoption by the Board of County
66 Commissioners and shall be the adopted land use element
67 pursuant to Chapter 163, Florida Statutes, for local
68 government, unless the local government's adopted Future Land
69 Use Element and related elements have been certified by the
70 Board of County Commissioners as consistent with the adopted

Countywide Future Land Use Element or the local government has entered into an agreement with the Board of County Commissioners to amend its plan in accordance with a specific time frame. If any local government's adopted Future Land Use Element and related elements or amendments thereto are not certified as consistent, the applicable portion of the Countywide Future Land Use Element shall prevail. Where a local Future Land Use Element and related elements or amendments hereto have been certified, the local government Future Land Use Element shall serve as the Countywide Land Use Element for that local government. Nothing contained herein shall prohibit any local government from adopting more restrictive land uses than provided for by the Countywide Future Land Use Element.

Sec. 7.6. Evaluation and Appraisal Report

Not more than once every two (2) years, the Board of County Commissioners shall prepare an evaluation and appraisal report of the adopted Countywide Future Land Use Element pursuant to Chapter 163, Florida Statutes. The evaluation and appraisal report shall identify the success and failure of the Countywide Future Land Use Element in preventing and resolving interjurisdictional incompatibilities among local governments plans.

Sec. 7.7. Certification Process.

The Board of County Commissioners is specifically authorized to adopt goals, objectives, policies and performance standards for the purposes of certification of local government future land use elements and related elements.

The adopted Countywide Future Land Use Element shall be transmitted to each local government. The first time a local government proposes an amendment to its Comprehensive Plan, subsequent to the initial amendment of the Countywide Future Land Use Element, or at the time of the local government's appraisal and evaluation report, whichever shall occur first, each local government shall, if necessary, propose modifications to its Future Land Use Element and related elements to make them consistent with the adopted Countywide Future Land Use Element, its goals, objectives, policies, and performance standards, and transmit the local Future Land Use Element, related elements and any proposed amendments to the Board of County Commissioners. The Board of County Commissioners shall review submitted local elements, including proposed amendments, if any, and determine whether or not they are consistent with the Countywide Future Land Use Element.

(a) If found to be consistent, the Board of County Commissioners shall certify the local Future Land Use Element and related elements. If the elements as certified included proposed amendments, the local government shall adopt those amendments pursuant to Chapter 163, Florida Statutes. The local government shall forward the adopted amendments to the Board of County Commissioners within thirty (30) days. If the adopted local amendments are different from the proposed amendments which formed the basis of the certification, the local elements shall be resubmitted for certification.

(b) If found to be not consistent, the Board of County Commissioners shall identify inconsistencies to the local elements. Upon being notified by the Board of County Commissioners that the local elements are not

1 consistent with the Countywide Future Land Use
2 Element, the local government may then propose
3 amendments to the Board of County
4 Commissioners. The Board of County
5 Commissioners shall review the submitted local
6 Future Land Use Element and related elements
7 and proposed amendments. Upon finding that
8 the proposed amendments to the local elements
9 are consistent with the Countywide Future Land
10 Use Element, the Board of County Commissioners
11 shall certify same and the procedures of
12 paragraph (a) shall apply.
13

14 If the Board of County Commissioners finds that the
15 local elements are still not consistent with the
16 Countywide Future Land Use Element, it shall
17 identify such inconsistencies. The provisions of
18 this paragraph shall apply to all subsequent
19 proposed amendments transmitted to the Board of
20 County Commissioners in response to the
21 inconsistencies identified by the Board of County
22 Commissioners in earlier reviews.
23

24 (c) The Board of County Commissioners may limit the
25 review of a local government's Future Land Use and
26 related elements if a majority plus one (1) of the
27 Board of County Commissioners find that due to the
28 particular circumstances of the local government,
29 no significant interjurisdictional
30 incompatibilities reasonably will be created. The
31 Board of County Commissioners shall adopt criteria
32 to determine the circumstances under which an
33 exemption or limited review may apply.
34

35 (d) All amendments to local government future land use
36 or related elements shall be reviewed and
37 certified in accordance with the initial review
38 process described in paragraphs (a), (b), and (c)
39 herein.
40

41 (e) If amendments cause local government future land
42 use or related elements to be inconsistent with the
43 Countywide Future Land Use Element, then the
44 applicable portion of such amendments or elements
45 shall be decertified.
46

47 (f) If a local government is in default under a local
48 government agreement pursuant to Section 7.5, then
49 the applicable portion of the local government
50 Future Land Use or related elements shall
51 automatically be decertified.
52

53 **Sec. 7.8. Amendments to the Countywide Future Land Use** 54 **Element.** 55

56 Amendments to the adopted Countywide Future Land Use
57 Element shall be initiated only by a local government,
58 governmental agency, or the Board of County Commissioners.
59 All amendments to the Countywide Future Land Use Element
60 initiated by a local government or governmental agency must be
61 transmitted to the Board of County Commissioners for
62 consideration. Any approved amendments shall be adopted
63 pursuant to Chapter 163, Florida Statutes.
64

65 **Sec. 7.9. Consistency Requirement.** 66

67 All elements of the local government's Comprehensive Plan
68 and all land development regulations shall be consistent with
69 the adopted Countywide Future Land Use Element. All
70 developments undertaken by and all actions taken in regard to

development orders by local governments or governmental agencies shall be consistent with the adopted Countywide Future Land Use Element.

Sec. 7.10. Board of County Commissioners or its designee as Local Planning Agency.

The Board of County Commissioners shall designate a Local Planning Agency which shall exercise Chapter 163, Part II Florida Statute authority for purposes of the Countywide Future Land Use Element.

Sec. 7.11. Legal Rights.

If a person, firm or corporation has, by actions in reliance on prior regulations, obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to those interests, then nothing in this Charter authorizes any governmental agency to abridge those rights. Nothing in this section authorizes any governmental agency to adopt a rule or regulation or issue any order that is unduly restrictive or constitutes a taking of property without the payment of full compensation, in violation of the Constitution of the State of Florida or of the United States.

Sec. 7.12. Prevalence Over Municipal Ordinances.

The ordinance adopting or amending the Countywide Future Land Use Element pursuant to Chapter 163, Florida Statutes, and this article shall prevail over any ordinance adopting a municipal land use element as provided for in Article 1, Section 3 of this Charter. The intent of this article is to provide countywide uniformity which will best further the interests of the citizens of Palm Beach County. This article shall permit regulatory pre-emption, but shall never be interpreted by the Board of County Commissioners as a transfer of functions or powers relating to municipal services.

Sec. 7.13. Effective Date.

This article of the Palm Beach County Charter shall be effective on April 1, 1992, if approved by a majority of electors in a duly called referendum.

Provision 5. Referendum:

Pursuant to the applicable provisions of Chapters 100 and 125, Florida Statutes, a referendum is hereby called and shall be held on March 10, 1992, at which time there shall be submitted to the electors of Palm Beach County, Florida, the following question:

**COUNTYWIDE GROWTH MANAGEMENT AND LAND USE AUTHORITY
CHARTER AMENDMENT**

Shall the Palm Beach County Charter be amended in accordance with Ordinance No. 92-___ to allow the Board of County Commissioners to exercise countywide growth management and land use planning authority by implementing the Countywide Future Land Use Element, which sets prevailing standards for land uses, protection of water resources, environment, solid waste, mass transit and other related issues of Countywide concern; and to

1 establish a cooperative process to resolve land use
2 conflicts between local governments.

3
4 Yes _____
5 No _____
6

7 **Provision 6. Form of Notice:**

8 The form of notice of the election by which this charter
9 amendment shall be submitted to referendum shall contain the
10 complete text of this ordinance setting forth the entire
11 proposed amendment as provided by law.

12 **Provision 7. Adoption by Affirmative Vote of Four**
13 **Members of the Board of County**
14 **Commissioners:**
15

16 Pursuant to Section 6.3 of the Palm Beach County Charter,
17 this ordinance providing for amendment to the Palm Beach
18 County Charter was adopted by an affirmative vote of four
19 members of the Board of County Commissioners of Palm Beach
20 County.

21 **Provision 8. Severability:**

22 If any section, paragraph, sentence, clause, phrase, or
23 word of this ordinance is for any reason held by the court to
24 be unconstitutional, inoperative or void, such holding shall
25 not affect the remainder of this ordinance.

26 **Provision 9. Inclusion in the Charter of Palm Beach**
27 **County, Florida:**
28

29 The provisions of the charter amendment hereby approved
30 shall become and be made a part of the Charter of Palm Beach
31 County, Florida, if approved by voters. The Article or
32 Sections of the charter amendment may be renumbered or
33 relettered to accomplish such, and the word "amendment" may be
34 changed to "section", "article", or any other appropriate
35 word.

36 **Provision 10. Effective Date:**

37 The charter amendment shall become law on April 1, 1992,
38 if approved by a majority of those electors voting on the
39 matter.

40 **Provision 11. Automatic Repeal If Not Approved:**

41 If this Charter Amendment is not approved by a majority

1 of those electors voting on the matter, this ordinance shall
2 be automatically repealed.

3 APPROVED AND ADOPTED by the Board of County Commissioners
4 of Palm Beach County, Florida on the 7th day of
5 January, 1992.

6 PALM BEACH COUNTY, FLORIDA,
7 BY ITS BOARD OF COUNTY
8 COMMISSIONERS

9
10 By [Signature]
11 Chairman

12
13 APPROVED AS TO FORM AND
14 LEGAL SUFFICIENCY

15
16 By [Signature]
17 County Attorney

18
19
20
21
22 Acknowledgement by the Department of State of the State
23 of Florida, on this, the 9th day of January, 1992.

24
25 EFFECTIVE DATE: Acknowledgement from the Department of
26 State received on the 1st day of April, 1992, at
27 and filed in the Office of the Clerk of the Board of
28 County Commissioners of Palm Beach County, Florida.

29
30
31
32
STATE OF FLORIDA, COUNTY OF PALM BEACH
I, MILTON T. BAUER, ex-officio Clerk of the
Board of County Commissioners certify this to be
a true and correct copy of the original filed in my
office on 1/7/92

DATED at West Palm Beach, FL on 4/13/92

MILTON T. BAUER, Clerk,

By: [Signature]
Deputy Clerk